

## LEGISLATIVE BILL 335

Approved by the Governor May 25, 2001

Introduced by Kristensen, 37; Chambers, 11

AN ACT relating to the Commission on Public Advocacy; to amend sections 29-3919 and 29-3922, Reissue Revised Statutes of Nebraska, and sections 13-518 and 29-3927, Revised Statutes Supplement, 2000; to define and redefine terms; to change and provide powers and duties; to create an advisory council; to provide reimbursement procedures for indigent defense systems; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-518, Revised Statutes Supplement, 2000, is amended to read:

13-518. For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, and (h) any excess tax collections returned to the county under section 77-1776; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-305.15 and 77-3523;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3007, 77-27,136, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01, 60-3001 to 60-3007, 77-27,136, and 77-3618, ~~and~~ insurance premium tax paid to counties, and reimbursements to counties from the County Revenue Assistance Fund under section 6 of this act;

(d) For community colleges, state aid to community colleges paid under sections 85-1536 to 85-1537.01;

(e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136; and

(f) For educational service units, state aid appropriated under section 79-1241.

Sec. 2. Section 29-3919, Reissue Revised Statutes of Nebraska, is amended to read:

29-3919. Sections 29-3919 to 29-3931 and sections 5 and 6 of this

act shall be known and may be cited as the County Revenue Assistance Act.

Sec. 3. Section 29-3922, Reissue Revised Statutes of Nebraska, is amended to read:

29-3922. For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(4) Council means the Indigent Defense Standards Advisory Council;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

~~(5)~~ (6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

~~(6)~~ (7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

~~(7)~~ (8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to ~~rules of the Supreme Court subdivision (3) of section 29-3901;~~ and

~~(8)~~ (9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Sec. 4. Section 29-3927, Revised Statutes Supplement, 2000, is amended to read:

29-3927. (1) With respect to its duties ~~related to the criminal defense of indigent persons under section 29-3923,~~ the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers; ~~and~~

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards, which are recommended to the commission by the council, for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds in the County Revenue Assistance Fund to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

~~(2)~~ (3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

Sec. 5. (1) The Indigent Defense Standards Advisory Council is created. The council shall consist of seven members, including the elected public defenders for Douglas County and Lancaster County, the chief counsel,

and four members who have substantial experience in providing indigent defense services either as a public defender, contracting attorney, or court-appointed attorney and who are nominated by the Nebraska Criminal Defense Attorneys Association and appointed by the commission. The four members who are appointed by the commission shall serve a term of four years, except that, of the members first appointed, one member shall serve a term of one year, one member shall serve a term of two years, one member shall serve a term of three years, and one member shall serve a term of four years. A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall select one of its members as chairperson.

(2) Notwithstanding any other provision of law, membership on the council shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

(3) Members of the council shall serve without compensation, but they shall be entitled to reimbursement for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The council shall be responsible for developing and recommending to the commission guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds in the County Revenue Assistance Fund to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

Sec. 6. (1) Any county which intends to request reimbursement for a portion of its expenditures for its indigent defense system must comply with this section.

(2) On or before May 15 of each year in which the county intends to seek reimbursement for a portion of its expenditures for indigent defense services in felony cases for the next fiscal year, the county shall present to the Commission on Public Advocacy (a) a plan, in a format approved by the commission, describing how the county intends to provide indigent defense services in felony cases, (b) a statement of intent declaring that the county intends to comply with the standards set by the commission for felony cases and that the county intends to apply for reimbursement, and (c) a projection of the total dollar amount of expenditures for that county's indigent defense services in felony cases for the next fiscal year.

(3) The commission may conduct whatever investigation is necessary and may require certifications by key individuals in the criminal justice system, in order to determine if the county is in compliance with the standards. If a county is certified by the commission as having met the standards established by the commission for felony cases, the county shall be eligible for reimbursement according to the following schedule and procedures: The county clerk of the county seeking reimbursement may submit, on a quarterly basis, a certified request to the commission, for reimbursement from the County Revenue Assistance Fund, for an amount equal to one-fourth of the county's actual expenditures for indigent defense services in felony cases.

(4) Upon certification by the county clerk of the amount of the expenditures, and a determination by the commission that the request is in compliance with the standards set by the commission for felony cases, the commission shall quarterly authorize an amount of reimbursement to the county as set forth in this section.

(5) If the General Funds appropriated are insufficient in any quarter to meet the amount needed for full payment of all county reimbursements for net expenditures that are certified for that quarter, the commission shall pay the counties their pro rata share of the remaining funds based upon the percentage of the county's certified request in comparison to the total certified requests for that quarter.

(6) For purposes of section 13-519, for any year in which a county first seeks reimbursement from the County Revenue Assistance Fund, the last prior year's total of restricted funds shall be the last prior year's total of restricted funds plus any increased amount budgeted for indigent defense services that is required to develop a plan and meet the standards necessary to qualify for reimbursement of expenses from the County Revenue Assistance Fund.

Sec. 7. Original sections 29-3919 and 29-3922, Reissue Revised

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Statutes of Nebraska, and sections 13-518 and 29-3927, Revised Statutes Supplement, 2000, are repealed.